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ABSTRACT

This annotated bibliography focuses on the constitutional role of Oklahoma by highlighting the constitutionally significant cases that arose during the territorial period and after statehood. The intention is to bring important constitutional issues closer to home, and thereby create an appreciation for the Constitution as a vital, living instrument of the government. No attempt has been made at comprehensiveness. Rather, the cases and other studies selected for inclusion are those that illustrate a decisive change in constitutional thinking or represent a milestone in constitutional development. An introductory essay provides background information on how Oklahoma entered the mainstream of constitutional development. The bibliography is divided into three sections. "Historical Background" contains 7 items on Native American beginnings and 13 on border disputes. "Civil Rights and Liberties" contains 39 items on black-white relations, 18 of which are education-related (most deal with desegregation at the college level, e.g., "Social Forces in the Admittance of Negroes to the University of Oklahoma", and "The Negro Teacher and the Fourteenth Amendment"), and 22 items on individual rights. "Governmental Relations and Powers" contains 22 items. Approximately one-third of the items listed in the bibliography are legal cases. Descriptive annotations are provided for all items. (JB)

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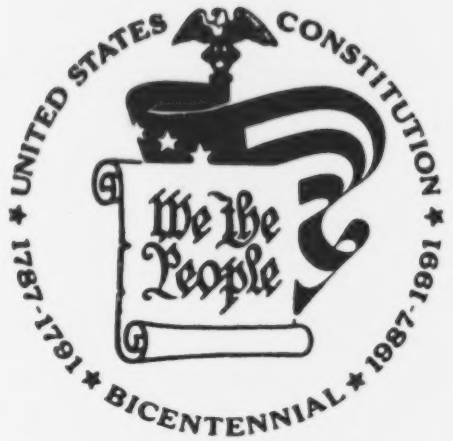
OKLAHOMA
AND THE UNITED STATES CONSTITUTION

A Selected and Annotated Bibliography



by
Anne Million

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Oklahoma
and the
United States Constitution

A Selected and Annotated Bibliography

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CONTENTS

Preface		v
Introduction		1
Part One:	Historical Background	7
	1. Indian Beginnings	7
	Bibliography	8
	2. Border Disputes	9
	Bibliography	10
Part Two:	Civil Rights and Liberties	15
	1. Desegregation: Black-White Relations	15
	Bibliography	17
	2. Individual Rights	26
	Bibliography	31
Part Three:	Governmental Relations and Powers	34
	Bibliography	37

PREFACE

Two centuries ago, in May 1787, representatives from twelve American states gathered in Philadelphia to revise the Articles of Confederation and unify a new nation. On September 17 they brought forth a document that laid the foundation for a democratic society and a federal government of the people, by the people, and for the people--that document was the Constitution of the United States. As Americans throughout the nation find diverse and meaningful ways to celebrate the 200th anniversary of their Constitution, the hope is repeatedly expressed that these celebrations will bring a lasting appreciation and knowledge of that document.

Citizens who live along the eastern seaboard can closely identify with the Constitution. Indeed, much has been written, even before the Bicentennial, about those original states and their unique historical relationship to the framing of that document. Constitutional history, however, is not merely the drafting and adoption of the Constitution, but also a study of its interpretation and application through the years. For it is a living document which has profoundly affected, and conversely been affected by, American society. It is much harder to find writings about the other states and their relationships to the national constitution. Natives or residents of states which

came into the Union in the nineteenth or twentieth centuries are less conscious of the constitutional role of their states.

This bibliography focuses on the constitutional role of one state, Oklahoma, by highlighting the constitutionally significant cases which arose during the territorial period and after statehood. The intention is to bring important constitutional issues closer to home, and thereby create an appreciation for the Constitution as a vital, living instrument of the government. No attempt has been made at comprehensiveness. Rather, the cases selected for inclusion are those which illustrate a decisive change in constitutional thinking or represent a milestone in constitutional development. They are frequently mentioned in books on constitutional history or cited as precedents and guiding principles in subsequent litigation.[1] They show the relationship of one state and its people to an eighteenth-century, yet modern, document. The selected materials on those cases show a significant or interesting treatment of the issues. Much of the literature, however, consists of law notes and commentaries, which are repetitious and couched in legal terminology and concepts of interest primarily to law students and the legal profession. Notes and casebook references are

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[1]The Oklahoma cases selected include those covered in two of the most important works on the U.S. Constitution: Edward S. Corwin, The Constitution and What It Means Today (Princeton: Princeton University Press, 1953) and revisions and supplements published as Edward S. Corwin's The Constitution and What It Means Today, ed. Harold W. Chase and Craig R. Ducat (Princeton: Princeton University Press); The Constitution of the United States of America: Analysis and Interpretation (Washington D.C.: Government Printing Office, 1913-1987).

often little more than excerpts and summaries of the cases. These are excluded, except for a few which cover an interesting point or make a notable observation that would be of general interest.

Compiling this bibliography has presented special problems. First of all, printed indexes do not neatly arrange "Oklahoma" and the "United States Constitution" as subject headings in relation to each other. This is also generally true of legal indexes. Case names, moreover, are not indexed in the Index to Legal Periodical Literature (1888-1919), nor from 1908 to 1926 in the Index to Legal Periodicals; and Current Law Index begins in 1980. Online databases have their own limitations, particularly inadequate retrospective coverage; they also fail to pull up items on the United States Constitution in relation to a particular state. Legal databases do a somewhat better job in calling up relevant cases, although many omissions and "false hits" can be expected. Working from citations in articles, casebooks and other works on the Constitution proved to be a more fruitful line of research. Unfortunately, this is also the most inefficient and time-consuming method of inquiry, although one commonly employed by historians.

Many cases before the Supreme Court involve more than one constitutional clause and arrangement of entries, according to the various sections of the U.S. Constitution would have been cumbersome. A similar problem would occur if arrangement by case name were employed because most published commentaries covered

numerous cases. It is hoped that by resorting to broad subject categories or constitutional concepts these obstacles have been circumvented without losing the usefulness of a rational framework. Each section begins with a synopsis of pertinent cases, followed by books and articles that discuss the cases and the issues raised by them.

This bibliography was launched at the suggestion of Richard S. Wells, David Ross Boyd Professor of Political Science at the University of Oklahoma. His interest and encouragement are gratefully acknowledged, along with the financial support he made available from "Constitution 200," the official state commission to celebrate the Bicentennial of the United States Constitution. David W. Levy, David Ross Boyd Professor of History at the University graciously consented to read the draft and made many valuable suggestions. Mickie Voges, Director of the University of Oklahoma Law Library, and law librarians Marilyn Nicely and Jui-Ying Li assisted in the use of their collection. The research facilities and interlibrary loan services of the University Libraries have proved invaluable. Denise S. Davis, graduate student in the Department of History at the University, played a crucial role with the typing of bibliographic information, verifying of legal information, and making numerous editorial suggestions. The author, however, is solely responsible for any errors or deficiencies in this work. Finally, the support and assistance of my "lawyer-in-residence," Elmer Million, are deeply appreciated.

INTRODUCTION

"The serviceability of history make[s] the present more understandable."[2] Therefore, some historical background may help to explain how Oklahoma entered the mainstream of constitutional development. Because Oklahoma's origins can be traced to important Supreme Court decisions, it could be called the offspring of the United States Constitution. The Supreme Court, in 1831, declined to rule on Georgia's right to exercise legislative power over the Cherokee Indians and its assertion of ownership over Cherokee land, thus paving the way for ousting the Indians from their eastern territory. The next year saw a change of judicial mind. The Court decided that the state did not have authority over the Cherokee Nation or rights in the Cherokee Territory, but Georgia refused to obey this mandate. Together, the state's Indian policy and President Andrew Jackson's refusal to sustain the Court's interpretation of Indian rights led to a plan for removing the remaining Creeks, Cherokees, and other southern tribes to Indian Territory, west of the Mississippi.

Oklahoma's early Indian beginnings were also responsible for a number of cases before the U.S. Supreme Court arising from land arrangements with the Indians. The Five Civilized Tribes

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[2]Edward S. Corwin, The Constitution and What It Means Today 11th ed. (Princeton: Princeton University Press, 1958), p. v.

held title to immense tracts of land in the Territory for the common use of their members. The fact that the concept of private property was alien to the Indians created a serious obstacle to statehood. To negotiate a transfer of tribal titles to individual members by allotment, Congress in 1893 appointed the Dawes Commission. Despite their general opposition to any changes, the Indians gradually succumbed to government pressure and incentives, such as the tax-exemption of property. The resulting agreements wrought some very radical changes in Indian property and political rights and were incorporated into the Curtis Act of 1898.[3] Subsequently, numerous cases before the Supreme Court, particularly involving the Choctaws and Chickasaws, arose over attempts by Oklahoma to levy and collect taxes on Indian land. Only Choate v. Trapp, the most significant such case and the one upon which later cases relied, is included in this bibliography. Numerous other cases dealing with Indian land and allotments were too peripheral to include.

Early Oklahoma history is also constitutionally significant for a major boundary controversy, which held interest and implications nationally as well as internationally. Literature on the important Red River boundary dispute between Texas and Oklahoma is included for two reasons--the number of Supreme Court cases involved and such constitutional provisions as treaty-making, which figured prominently in the controversy. Due to the

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[3]For further information see: Arrell M. Gibson, The History of Oklahoma, rev. ed.(Norman: University of Oklahoma Press, 1984).

plethora of litigation, however, only the initial and final cases are included.

It is hard to find an issue more interesting and complicated than border disputes, especially where rivers are involved. The Red River not only encompassed the normal complications of a river boundary--the changing river bed, the altering of banks by erosion and accretion, and inadequate or challengeable surveys--but its river valley was also the focus of competing interests. The fertile soil made it important to the farmer and the grazing interests of the Indians. Its mineral resources, especially the oil fields, were of prime concern to Texas, Oklahoma, and the United States government. When the river became unimportant for travel to the West, the question of navigability remained a lively issue due to the federal government's authority in matters concerning dam construction and power generation.

The first treaty concerning the Red River was with Spain in 1819. Subsequent to Mexican independence in 1821, a new treaty, based on the unratified treaty of 1828, was promulgated with Mexico in 1832. Shortly thereafter, two treaties were negotiated in 1838 and 1842 with the newly independent nation of Texas. During this whole period several treaties were made with Indian tribes concerning their rights and interests in the area and the boundaries of their territory. In addition to its constitutional role in treaty-making, Congress passed various acts determining the river boundary and jurisdiction of Greer County--as well as statehood enabling acts for Texas and Oklahoma.

The dual nature of Oklahoma's historical beginnings--Indian relations and territoriality--is evident in this early litigation on constitutional issues. By their very nature, these two sources of federal cases arising in Oklahoma would decline in importance after the second decade of statehood. On the other hand, the views of Indians and homesteaders as to land use and land ownership continued to influence for several more years the state's policy of economic regulation and its constitutionality.

The political pattern at the time of statehood was agrarian and populist. The Oklahoma brand of populism with its concept of land ownership was stamped in part by the conflict between cattlemen and farmers. Without an understanding of these competing interests and the influence of the national experience from which the young state benefited, Oklahoma's regulation of economic power, land ownership, and corporate monopoly appears more radical than what history shows to be an essentially conservative policy.[4] The thrust of early Oklahoma law was to protect the people against the excessive encroachment of political and economic power. The cases reviewed by the U.S. Supreme Court clearly reflected this policy.

In a survey of Oklahoma cases before the Supreme Court, between 1911 and 1920, seven cases were related to the state's economic policy, four of which involved the unconstitutional

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[4]Rennard J. Strickland and James C. Thomas, "Most Sensibly Conservative and Safely Radical: Oklahoma's Constitutional Regulation of Economic Power, Land Ownership and Corporate Monopoly," Tulsa Law Review 9 (Fall 1973): 168.

exercise of state taxing authority. From 1921 to 1930, eight cases on commercial issues went to the Court; half dealt with state taxation of federal instrumentalities (Indians). In the next decade, 1931 to 1940, the Court reviewed only two taxation and commercial cases. A civil rights case during the same period heralded the increase in litigation of this nature for the next three decades.[5]

The survey also uses an index of relative frequency of judicial review (the number of Oklahoma cases in relation to the average number of cases from all states that were appealed to and adjudged by the U.S. Supreme Court), to show that until 1951 Oklahoma stood above the national average in cases appealed to the Supreme Court. Except for the 1920's, the decline has been steady:

(1=the average of cases nationally)

1911-20 = 4.28
1921-30 = 2.9
1931-40 = 3.24
1941-50 = 3.06
1951-60 = .9
1961-72 = .62
Overall = 2.36

This index illustrates the extent, not the significance, of judicial activity related to the Constitution that originated in Oklahoma. However, it would be a herculean undertaking to show the relative national importance of Oklahoma cases. Actually, Supreme Court decisions are only one factor in constitutional

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[5]Unpublished survey by Richard S. Wells, Professor of Political Science, University of Oklahoma.

development. The body of constitutional law and doctrine can be affected not only by the decisions of the High Court, but also by the Court's refusal to hear a case or to decide a case on salient constitutional points. Another factor would certainly be the decisions of the lower federal courts, which can influence constitutional doctrine. Other underlying and overlying factors include public policy and political climate. The best that can be achieved in this limited bibliographic work is to offer a selection of the more significant cases to represent Oklahoma's contribution to constitutional development, as well as some of the literature that adds to an understanding of those cases and their historical context. On the basis of even so limited a selection it is hard to escape the conclusion that Oklahoma and its citizens have played a highly significant role in shaping the document whose two-hundredth birthday we celebrate this year.

Indian Beginnings

Cherokee Nation v. Georgia, 5 Peters 1 (1831).

Suit was brought by the Cherokee Nation against the State of Georgia, which had alleged ownership of all Cherokee territory and extended its laws over the Cherokees in violation of several treaties in force. To prevent the execution of these laws, which threatened annihilation of the Cherokee as a political society, the Indians appealed to the Supreme Court. The Court denied the injunction, holding that it was not the proper tribunal in which any such alleged rights should be addressed. The Marshall opinion is noted for its definition of the legal status of Indians with regard to the federal government--that of a domestic dependent nation in a state of pupilage rather than that of a foreign nation.

Worcester v. Georgia, 6 Peters 515 (1832).

The plaintiff, a Vermont missionary, was condemned to hard labor in a Georgia penitentiary for violating a state law which he alleged to be repugnant to the Constitution, laws, and treaties of the United States. As a white person residing in the Cherokee Nation, without a license or permit required by the act in question, the plaintiff was seized and abducted, unconstitutionally according to the U.S. Supreme Court. The Court ruled that the laws of Georgia had no force within the Cherokee Nation, which was subject only to the government of the United States. This case gave rise to the reputed remark of President Jackson, "John Marshall has made his opinion, now let him enforce it."

Choate v. Trapp, 224 U.S. 665 (1912).

The 8,000 plaintiffs, members of the Choctow and Chickasaw tribes, held 320 acres of allotted land issued under the terms of the Curtis Act of 1898, which stated that land was nontaxable for a specific period of time. Before the expiration of that period, the State of Oklahoma sought to assess and collect taxes on Indian land. The Oklahoma Supreme Court, which denied the plaintiffs' request for an injunction, was reversed on appeal to the U.S. Supreme Court. The High Court ruled that the Fifth Amendment protected the tax exemption granted to the Indians, and this property right was binding on the State of Oklahoma, which recognized that right in its state constitution. This case was the basis for decisions in subsequent cases before the U.S. Supreme Court related to the taxability of Indian allotments in Oklahoma.

Debo, Angie. And Still the Waters Run: The Betrayal of the Five Civilized Tribes. Princeton: Princeton University Press, 1940.

An account of the relationships between the United States Government and the white settlers on the one hand and the Five Civilized Tribes of Indian Territory on the other. Despite efforts of the federal government to make allotments to, and safeguard the property of, The Tribes, within a generation the Indians lost most of their lands and were reduced to a state of economic dependency in an atmosphere of distrust and humiliation.

Futor, Norman J. "Federal Review of Oklahoma Supreme Court Decisions." Master's thesis, University of Oklahoma, 1939.

Inquires into the effect of judicial review of Oklahoma Supreme Court decisions by the United States Supreme Court from 1908 to 1929. During the first 21 years of Oklahoma statehood 90 cases were reviewed, which leads the author to comment that "to no other state has federal review during the formative years been so important." These cases are given close scrutiny and comparative analysis from a more legalistic point of view than one might expect. More than half the study deals with Indian allotments and other Indian cases; the remainder covers public lands, police powers, interstate commerce, and procedural issues.

Lindquist, G.E.E. "Indian Treaty Making." Chronicles of Oklahoma 26 (Winter 1948-49): 416-48.

The author indicates that in the colonial period the term treaty was just as likely to be applied to a meeting between Indians and Whites as to any agreement formally arising from such a meeting. In the strictest sense, he maintains that there never should have been, or claimed to be, such a thing as a treaty between Whites and Indians because treaties presuppose that the nations involved have equal standing. Although President John Q. Adams' Attorney General expressed the opinion that, insofar as treaty-making was concerned, Indian tribes were independent nations, Chief Justice John Marshall in Cherokee Nation v. Georgia negated that theory. Marshall, in the court's decision, characterized the position of the tribe, in relation to the federal government, as that of ward to guardian.

Wilkins, Thurman. Cherokee Tragedy: The Story of the Ridge Family and the Decimation of a People. New York: Macmillan, 1970.

The story begins with the 1830 law passed by Congress calling for the removal of all eastern Indians to land beyond the Mississippi and with Georgia's claim to Cherokee land, in violation of several treaties guaranteeing Indian sovereignty. It recounts the lives of Cherokee leaders Major Ridge, his son John, and his nephew Elias Boudinot, who believed that only western migration could save the Cherokee people and their civilization. Division among the Cherokees led to the brutal slaying of all three by the Ross party in revenge for the Trail of Tears sufferings. The story is told with vivid and emotionally charged detail, relying mainly on primary sources such as letters, diaries, memoirs, government archives and documents, missionary records, and current accounts.

Border Disputes

United States v. Texas, 162 U.S. 1 (1896).

This case adjudged in the U.S. Supreme Court was only the beginning of litigation that extended over a third of a century. The initial boundary marked by the Red River was set in a treaty between the United States and Spain in 1819. This judgment did not last long due to the vagaries of the river bed, surveying controversies, conflicting interests over oil and gas leases Indian rights, and land use.

Oklahoma v. Texas, United States, Intervener, 274 U.S. 714 (1927).

This decree of the U.S. Supreme Court marked the end of a long line of cases dealing with the controversial Red River boundary between Texas and Oklahoma. The fourth report of the commissioners was confirmed and duly authenticated, the boundary line having been finally delineated, mapped, marked and agreed upon.

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Andrew, Bunyan H. "Oklahoma's Red River Boundary: Under U.S. Supreme Court Decision in 1927." Chronicles of Oklahoma 44 (Autumn 1966): 246-53.

Discusses the judicial settlement of the joint problems of determining the main branch of the Red River and the actual river boundary between Oklahoma and Texas. The issues antedated Oklahoma statehood and were not settled until the Supreme Court's decision of April 25, 1927. Treaties, Congressional legislation, scientific surveys, and special commissions mark the century of dispute which was settled by the Supreme Court acting as a "court of equity."

Bowman, Isaiah. "An American Boundary Dispute." Geographical Review 13 (April 1923): 161-89.

Treats the "most complicated boundary dispute on record anywhere" from a geographical standpoint. As a result, the maps photographs, and graphic figures add a unique dimension to the account of this 100-year controversy. The author imparts something of the magnitude of litigation with the information that testimony comprised "nine volumes of 5,513 printed pages, much unprinted testimony introduced by stipulation, two large atlases, in addition to 158 exhibits of photographs, samples of tree rings, soils, etc."

Chapman, Berlin B. "The Claim of Texas to Greer County." Southwestern Historical Quarterly 53 (July 1949): 19-34; (October 1949): 164-79; (April 1950): 404-21.

This article, in three parts, covers the history of Greer County from 1818 to 1884, in the first article, and 1885 to 1896, in the second article, both being the period in which Texas exercised sovereignty over the county until the Supreme Court decision of 1896. The third article carries the controversy through the 1930's and covers the final settlement of the 100th Meridian and troublesome land questions.

Clark, Joseph S. "Boundaries of Oklahoma." Master's thesis, University of Oklahoma, 1932.

Recounts the history of the complicated border settlement that emerged from the Louisiana Purchase and gave rise to the state of Oklahoma. Two chapters, "The Hundredth Meridian and the Greer County Case" and "The Southern Boundary of Oklahoma," describe the border conflict with Texas, which was not settled at the time of writing. Primary sources include government documents, letters, field notes, manuscripts, and newspaper accounts.

Foreman, Grant. "Red River and the Spanish Boundary in the United States Supreme Court." Chronicles of Oklahoma 2 (1924): 298-310.

A historical account of the Red River from the nineteenth-century explorations and the 1819 treaty between the United States and New Spain through the litigation between Texas and Oklahoma. The author remarks that the opinions of the Supreme Court Justices are notable for their lucid exposition of the various complicated matters touching the issues.

Gant, N.W. "A History of the Texas Boundary Disputes." Master's thesis, Colorado State Teachers College, 1930.

Narrates the history of various disputes over the Texas boundary questions. The first part covers early Texas history under Spanish and Mexican rule; the second, the period following the Texas Revolution and annexation to the United States, 1845-1851; the third, the litigation and decisions of the Supreme Court of the United States, most of which dealt with the Texas-Oklahoma controversy over Greer County and the 100th Meridian. The bibliography covers both primary and secondary sources.

Harbour, Emma. "A Brief History of the Red River Country since 1903." Chronicles of Oklahoma 16 (March 1938): 58-88.

Traces the development and significance of the Red River country in relation to the Southwest and the nation as a whole. The controversy over Greer County and the Texas-Oklahoma river boundary as dealt with by treaty and by the Supreme Court is discussed, leading the author to note that the dispute has interested several countries and states.

Lay, George C. "The Red River Valley Controversy Between the United States, Texas and Oklahoma." American Law Review 63 (1929): 180-99.

Surveys the controversial questions concerning Texas' and Oklahoma's claims in the Red River Valley, extending over a period of thirty-five years and involving the United States Supreme Court on thirty-seven occasions. On the first occasion Texas claimed that there were no constitutional grounds for Supreme Court jurisdiction in the matter because a sovereign state could not be sued by the United States but only by a sister state and the controversy was political not judicial. The question was settled in favor of the Court's jurisdiction.

McKinney, Dale. "A Century of Dissention [sic] at the Red River Boundary." Master's thesis, Oklahoma Agricultural and Mechanical College, 1941.

Surveys the disputes over the Southwest boundary along the Red River beginning in 1818 between the United States and, successively, Spain, Mexico, and Texas; and then between Texas and Oklahoma, until the final settlement by the Supreme Court. The author concludes that jurisdictional questions in the Red River area will continue as the river alters its course from time to time and as changes in oil well rights occur. Relies heavily on primary sources.

Rains, Cleo. "The Importance of Red River in the History of the Southwest." Master's thesis, North Texas State College, 1940.

Treats the geography and physical characteristics of the Red River, its history from the period of occupation by the Indians through its early and late periods of exploration, and subsequent economic development. One chapter deals with the Red River boundary dispute and final resolution by the U.S. Supreme Court.

Sellards, Elias H. "The Oklahoma-Texas Boundary Suit." Science 57 (March 1923): 346-49.

Summarizes the background of the 1923 Supreme Court decision settling the Texas-Oklahoma boundary, which the author reports of "more than ordinary interest by reason of the large property values involved, the considerable cost of the litigation, and the extent to which scientific investigations were utilized." The focus of the article is that of a geologist.

Tyson, Carl Newton. Red River in Southwestern History. Norman: University of Oklahoma Press, 1981.

Traces the place of the Red River in history from early Spanish and French explorations to the 1970's. Only events that took place because of the river's presence are chronicled. A chapter is devoted to the more than 100 years of legal controversy over the Red River boundary between Texas and Indian Territory (then later the State of Oklahoma), from the Adams-Onis Treaty of 1819 to Court approval of the boundary commission report in April 1927.

Welborn, Claud A. The Red River Controversy. N.P.: Nortex Offset Publisher, 1973.

Based on his dissertation, this work traces the history of the Red River boundary disputes from the Louisiana Territory to acceptance of the final report by the boundary commission on April 25, 1927. The disputes arise from reliance on the customary opinion that the middle of a stream is the boundary between two political units rather than adherence to specific provisions of a treaty when valuable mineral deposits are at stake. Despite efforts to establish an indisputably clear, specific and identifiable boundary line, that portion of the boundary along the 100th Meridian and the Red River is referred to as one of the most noted boundary disputes in American history. Sources include government documents, and contemporary accounts.

Desegregation: Black and White Relations

Guinn and Beal v. United States, 238 U.S. 347 (1915).

The Supreme Court was petitioned to rule on the constitutionality of the so-called "Grandfather Clause," in a 1910 Amendment to the Oklahoma Constitution. The amendment required proof of literacy in order to register to vote, but no literacy test was required of anyone who on January 1, 1866 was entitled to vote under any form of government or was resident in a foreign nation, nor of any lineal descendant of such a person. The effect of this was to disenfrachise Blacks in the first instance and to extend the franchise to Whites not meeting the literacy requirements in the second instance. The Supreme Court overruled the state court and found the "Grandfather Clause" to be void because it violated the Fifteenth Amendment of the U.S. Constitution. Moreover, the clause being inseparable from the rest of the amendment, the court declared the amendment as a whole to be invalid.

Hollins v. Oklahoma, 295 U.S. 394 (1935).

Jess Hollins, a Black residing in Sapulpa, Oklahoma, was convicted of rape and given the death sentence. The state failed to provide legal counsel, which he was unable to afford himself. Moreover, qualified Blacks were systematically excluded from the jury sitting on the case. The Supreme Court, in a memorandum opinion, established the principle, reiterated in subsequent decisions, that the trial and conviction of a Black by an all-White jury, from which qualifying Blacks had been excluded solely because of race or color, was a denial of equal protection under the Fourteenth Amendment.

Lane v. Wilson, 307 U.S. 268 (1939).

The plaintiff, a Black citizen of Oklahoma, was denied by state registration officials the right to register, which was a prerequisite to voting. He petitioned directly to the Supreme Court on grounds of Fifteenth Amendment rights. The Court declared the state statute amounted to virtual disenfranchisement for those who failed to register during the limited 12-day period. The Court found that the 1916 legislation partook too much of the infirmity of the "Grandfather Clause," which was declared uncon- stitutional in Guinn and Beal v. United States, and therefore was itself unconstitutional.

Sipuel v. Board of Regents of the University of Oklahoma, 332 U.S. 631 (1948).

In 1946 Ada Lois Sipuel, a Black citizen of Oklahoma and an honor graduate of the all-Black Langston College, applied for and was denied admission to the all-White University of Oklahoma Law School. Because she had not exhausted her remedy of appealing to the State Regents for separate law school facilities her case before the district court was rejected. The Oklahoma Supreme Court upheld the decision, but the U.S. Supreme Court declared that the plaintiff was entitled to a legal education at the same time as any other citizen. The state's answer was the establishment of an "instant" law school for Blacks as an adjunct of Langston. The charge of educational inequality under this arrangement was appealed in a second case to the U.S. Supreme Court, which ruled that the plaintiff would have to be admitted on an equal basis to the existing all-White law school at the University of Oklahoma.

McLaurin v. Oklahoma State Regents, 339 U.S. 637 (1950).

George W. McLaurin, a Black citizen of Oklahoma, applied for admission to the University of Oklahoma to study for a doctorate in education. He was rejected, admittedly solely on account of race. After the federal district court declared unconstitutional the statute relied on to deny admission, the state legislature amended the law to admit Blacks to White educational institutions when comparable programs were unavailable at Black schools, and then only on a segregated basis. The plaintiff was assigned isolated seats in the classrooms, library and cafeteria. On appeal from the district court, which had refused to remove the conditions, the U.S. Supreme Court held that a Black admitted to a state graduate school must receive equal treatment. Differences in treatment because of race impaired the ability to receive an equal education and violated equal protection of the laws under the Fourteenth Amendment.

Dowell v. Board of Education, 396 U.S. 269 (1969).

In trial court the Oklahoma City School Board's desegregation proposal for immediate alteration of school attendance zones was approved, and the board was ordered to submit comprehensive plans for desegregation of the entire school system. The Court of Appeals vacated the order approving changes, stating any action should wait until the adoption of the comprehensive plans. On appeal, the Supreme Court held that the changes should be permitted prior to the formulation of the comprehensive plans, since under due process further delay was intolerable and desegregation of the school system should proceed immediately pending appeal.

Aikin, Charles. The Negro Votes. San Francisco: Chandler Publishing Co., 1962.

Addresses one of the nation's basic civil rights, the right to vote, by means of reproducing, in their entirety, the Supreme Court opinions on major voting rights cases. In presenting the Guinn and Lane cases the author comments that Oklahoma, among other states, experimented with the so-called "Grandfather Clause" as a method of effectively denying the vote to Blacks. In 1910, the state passed a constitutional amendment establishing a literacy test for all prospective voters, but it exempted any individual who voted, or whose ancestors qualified to vote, before 1866.

Bittle, William E. "The Desegregated All-White Institution... The University of Oklahoma." Journal of Educational Sociology 32 (February 1959): 275-82.

Analyzes the social and cultural milieu at the University of Oklahoma prior, and subsequent, to the first attempt to desegregate higher education in the Sipuel and McLaurin cases. The author shows that the state was in many respects well-disposed to desegregation, but concludes that such favorable factors were too inconclusive to make the University a useful example to other institutions.

_____ and Gilbert Geis. The Longest Way Home: Chief Alfred C. Sam's Back-to-Africa Movement. Detroit: Wayne State University Press, 1964.

In recounting the story of an exodus of Black Oklahomans to Africa's Gold Coast under the leadership of self-styled Chief Alfred Charles Sam, the authors relate a human interest story of early Oklahoma Black communities. The machinations behind the "Grandfather Clause" are vividly told, as well as the tragic lengths to which White radicalism went in preventing Blacks from voting. Contemporary newspaper accounts furnish most of the documentation for the account.

Bland, Randall W. Private Pressure on Public Law: The Legal Career of Justice Thurgood Marshall. Port Washington, New York: Kennikat Press, 1973.

Examines the legal career of Thurgood Marshall with the NAACP prior to his elevation to Associate Justice of the U.S. Supreme Court. Several cases originating in Oklahoma and argued by the NAACP on Fourteenth and Fifteenth Amendment rights were brought before the Supreme Court with success. In describing the decision in Guinn and Beal v. United States, the author calls it

a political victory for Blacks that was reflected in other cases during the same period. Another early case, Hollins v. Oklahoma, established the principle, reiterated in a number of subsequent suits, that arbitrary exclusion of Blacks from all-White juries was unconstitutional. Both the Sipuel and McLaurin cases are described as historically significant, not only because the constitutionality of the "separate but equal" doctrine was challenged by the NAACP, for the first time, but also because the High Court addressed the innovative sociological arguments expounded in these cases. A fifth Oklahoma case, Lyons v. Oklahoma, brought Marshall his first major loss involving civil rights, when the Supreme Court held that the Fourteenth Amendment did not cover a second admission of guilt on the basis of intimidations used to secure an earlier guilty plea.

Blaustein, Albert P. and Robert L. Zangrando, eds. Civil Rights and the Black American: A Documentary History. New York: Simon and Schuster, 1968.

Reviews current civil rights problems in a historical context through official and legal documents, though some quasi-public pronouncements are included. The Guinn and Beal v. United States opinion illustrates some states' use of the "Grandfather Clause" to restrict Black voting rights; Lane v. Wilson is mentioned only as a case in which subsequent disenfranchising subterfuge was also held unconstitutional. Documents for the Sipuel and the McLaurin cases are not included, but the cases are referred to as milestones leading to the Brown decision, which dealt the death blow to the "separate but equal" doctrine.

Celarier, Michelle. "A Study of Public Opinion on Desegregation in Oklahoma Higher Education." Chronicles of Oklahoma 47 (Autumn 1969): 268-81.

Examines the Sipuel and McLaurin cases and the public's reaction to them, according to state newspaper stories, editorials and letters to the editor, surveys of student reaction, and reports in campus papers. The public is shown as moderating and accepting the inevitability of desegregation, which finally came in the Brown v. Topeka case.

Cross, George L. Blacks in White Colleges: Oklahoma's Landmark Cases. Norman: University of Oklahoma Press, 1975.

An account of the circumstances leading to the desegregation of the University of Oklahoma by a former President. Cross describes Ada Lois Sipuel's application to enter the University's Law School, and upon being denied admittance, her appeal to the U.S. Supreme Court, with the assistance of the NAACP attorneys.

The Court's equivocation led to a jerry-built law school established at the state capitol as a branch of the all-Black Langston University. As Mrs. Fisher, she won a second appeal, which allowed her to study at the University's Law School, from which she graduated with honors. The author also relates the subterfuge attending the admission of George McLaurin to graduate school, a contrived segregated seating arrangement which the administration felt necessary to comply with the state law although deplored and derided by many. It was finally abandoned when the U.S. Supreme Court declared that the state segregation laws were unconstitutional. This highly personal account includes much firsthand documentation.

Cummins, Roger W. " 'Lily-White' Juries on Trial." Chronicles Of Oklahoma 63 (Summer 1985): 166-85.

Relates the midnight arrest of Jess Hollins, his irregular trial and conviction. For a period of four years he was incarcerated under the death sentence while civil rights activists fought the case in court and in the press. Although not unique in Southern history, the case did win four constitutional principles for Black Oklahomans: the right to trial by a jury of one's own peers, the right to face one's accusers, an assurance of proper counsel, and a trial in a recognized courtroom. Sources include court documents and newspaper accounts.

Detweiler, John S. "The Negro Teacher and the Fourteenth Amendment." Journal of Negro Education 36 (Fall 1967): 403-409.

Discusses the special burden of Black teachers in the South, who were victims of a one-way movement in school desegregation, losing their jobs when they lost their students to White schools. Through several cases, the author traces the growing interest of federal courts in this question. In Dowell v. Board of Education of Oklahoma City, the District Judge ordered implementation of a standard recommended by his blue ribbon panel, which required faculties in integrated schools to have the same ratio of White to Black teachers as in the system as a whole. The Dowell case was cited shortly afterwards in two Virginia and New York cases.

Franklin, Jimmie Lewis. The Blacks in Oklahoma. Norman: University of Oklahoma Press, 1980.

Treats the central themes in the history of Black Oklahomans and the influential personalities who brought to them a sense of community, racial solidarity and progress. An institutional approach is emphasized; one such institution being the National

Association for the Advancement of Colored People, which took an early role in fighting violence and racial discrimination in the state. Among the victories recounted are the Guinn case in 1915, Lane v. Wilson in 1939, the Hollins case in 1935, and in the late 1940's the high water mark cases, Sipuel and McLaurin.

Hubbell, John T. "The Desegregation of the University of Oklahoma, 1946-1950." Journal of Negro History 57 (October 1972): 370-84.

Recounts measures taken to desegregate higher education in Oklahoma. Official records, legal briefs, interviews, and contemporary accounts are used to describe the climate of opinion and environment in which Ada Lois Sipuel and William McLaurin sought to be admitted, ultimately successfully, to the University of Oklahoma, thereby paving the way for a final deathblow to the "separate but equal" doctrine in the 1954 Brown decision. The article is based on Hubbell's Master's thesis at the University of Oklahoma.

_____. "Some Reactions to the Desegregation of the University of Oklahoma, 1946-1950." Phylon 34 (June 1973): 187-96.

Another of the author's accounts of how the "walls of racial segregation at the University of Oklahoma were breached only after four years of tortuous litigation and two epochal Supreme Court decisions." After discussing the context of the Sipuel and McLaurin cases, he draws the conclusion that the "judicious, liberal and enlightened attitude of the University officials and the dignified bearing of the litigants were the key to the calm tenor of the transitional period from 1946 to 1950."

Kluger, Richard. Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality. New York: Alfred A. Knopf, 1976.

Deals in encyclopedic detail with the legal, political, and sociological maneuverings and slow but progressive changes that marked the struggle towards equal rights for Blacks in America. Although the focus is on the revolutionary decision in the Brown case, the author recounts the Sipuel case, which went after the whole "separate but equal" doctrine for the first time and the McLaurin case, which said that equality had to be real, that state-imposed restrictions and handicapping distinctions create an unequal learning environment. As well-researched and exhaustively detailed as the book is, it nonetheless presents the historic issues in terms of human drama.

Konvitz, Milton. Expanding Liberties: Freedom's Gains in Post-war America. New York: Viking Press, 1966.

Studies the problem of civil liberties over the quarter century since World War II. The Sipuel case is one of the breakthrough cases leading to the ultimate repudiation of the doctrine of "separate but equal" facilities by the Supreme Court. The McLaurin case, decided on the same day as another important case, Sweatt v. Painter, is described and characterized as a dramatic example of how morally degrading racial segregation was in practice.

Lapati, Americo D. Education and the Federal Government: A Historical Record. New York: Mason/Charter, 1975.

Analyzes the historical records of Congressional legislation and Supreme Court decisions dealing with education. Both the Sipuel and McLaurin cases are discussed and referenced at various points. Unlike the earlier cases such as Sipuel which upheld "separate but equal" but made progress in educational opportunities, the McLaurin decision is noted because it began at least to attack the matter of segregation and went so far as to acknowledge that segregation failed to provide equal educational opportunities.

Leake, Robert E. "Constitutional Law--The Fourteenth Amendment and Segregated Education." Louisiana Law Review 8 (May 1948): 588-94.

Discusses the Sipuel case, in which, though Blacks are entitled to an education equal to that furnished to other races, the question of whether or not they may validly complain because such education in some states is separate and segregated raises for the times new and complex political and social questions. The author expresses the contemporary belief that the Supreme Court will adhere to its established policy and allow states and individual members of both races to iron out their difficulties in the spirit of cooperation and recognition of mutual benefits.

Martin, Charles H. "Oklahoma's 'Scottsboro' Affair: The Jess Hollins Rape Case, 1931-1936." South Atlantic Quarterly 79 (Spring 1980): 175-88.

Recounts the Jess Hollins trial in Oklahoma, which was compared to the more notorious Scottsboro rape case in Alabama. Although it attracted only brief national interest, the case raised several important issues in national, Southern, and Anglo-American History. Its significance lay in the exclusion of Blacks from juries, which was the constitutional point

addressed by the U.S. Supreme Court; the quality of Southern justice; the reaction to racial rape and sex, and the conflict and competition between the civil rights groups. The article is based on NAACP papers, materials from the Library of Congress, newspaper reports and secondary sources.

Mellinger, Phillip. "Discrimination and Statehood in Oklahoma." The Chronicles of Oklahoma 49 (Autumn 1971): 340-78.

Discusses the discriminatory policies of the Oklahoma government against Blacks in the 1890's and 1910's. The "Grandfather Clause," passed on August 2, 1910, enfranchised all voters and their decendants who were eligible to vote as of January 1, 1866, but required a literacy test of all others. In the Guinn case the Oklahoma Supreme Court found the clause to be constitutional, and on appeal the federal court refused to grant injunctive relief. In mid-1915 the U.S. Supreme Court ruled that the "Grandfather Clause" was contrary to the federal constitution. This iniquitous piece of racial legislation, though voided, cast its shadow for many years by way of subsequent inequitable Black registration laws that prevailed until 1939.

Miller, Loren. The Petitioners: The Story of the Supreme Court of the United States and the Negro. New York: Pantheon Books, 1966.

Attempts to put the Supreme Court in historical perspective, starting with the making of the Constitution, the Dred Scott case and Civil War Amendments. The most important civil rights cases are discussed. Voting rights was an early issue, as various Southern States adopted constitutional amendments to keep Blacks away from the polls, the more subtle and devious being the "Grandfather Clause." The Supreme Court's ruling against Oklahoma's "Grandfather Clause" brought sudden death to others, although subsequent election laws, with the same purpose, had to be struck down separately, as in Lane v. Wilson. In higher education, the Oklahoma Sipuel and McLaurin cases broke the back of the "separate but equal" formula, though the Supreme Court did not abandon all pretense of the principle until the Brown decision. The author credits the Court, along with the President, for striking down discrimination laws and practices, when Congress, following belatedly, had failed.

Moon, F.D. "Higher Education and Desegregation in Oklahoma." Journal of Negro Education 27 (Summer 1958): 300-310.

This article is concerned with desegregation in higher education in Oklahoma and its impact upon the future of Langston University, the only institution of higher education established for Blacks. It provides background information and statistics relating to desegregation at various colleges and universities in the state, including a brief mention of the circumstances surrounding the admission of George McLaurin to the University of Oklahoma.

Rowan, Carl T. South of Freedom. New York: Alfred A. Knopf, 1952.

Recounts through personal experiences the story of the struggle of Whites and Blacks on the one hand to maintain the old order of segregation and on the other to establish a "New South." In his chapter describing the events surrounding the Sipuel and McLaurin applications to attend the University of Oklahoma, the author comments that on his visit to Norman in February 1951, in the aftermath of the all but vanished conflict, he found the closest thing to a New South that he had ever seen. The book closes with his observation that "North or South, black or white, we are but one, and we all lost those hundred years."

Saxe, Allan. "Protest and Reform: The Desegregation of Oklahoma City." Ph.D. dissertation, University of Oklahoma, 1969.

Attempts to define, analyze, and evaluate a significant period in the political life of a border state community, Oklahoma City, Oklahoma. It presents a political analysis of desegregation practices and discusses the various ways in which Blacks were effectively removed from the political process. The analysis begins with one of the first targets of the early desegregationists, the disenfranchising "Grandfather Clause," brought down in Guinn. These desegregationists, known later as the Oklahoma Constitutional League, led by editor-publisher Roscoe Dunjee, were spurred on to protest other discriminatory practices and laws. One such protest included the exclusion of Blacks from Oklahoma juries, which was declared unconstitutional in Hollins v. Oklahoma. To launch regional attacks on segregation in higher education Oklahoma City was the mustering place for protest leaders, attorneys, and mass media. Success in the Sipuel and McLaurin cases opened the doors of White colleges and universities to Blacks on the basis of full equality and led to later desegregation at the public school level.

Spears, Earnestine B. "Social Forces in the Admittance of Negroes to the University of Oklahoma." Master's thesis, University of Oklahoma, 1951.

Studies the personal motives and background of Black students admitted to the all-White University of Oklahoma, as well as the influence and measures used by organized groups to assist in their admittance. Principal sources in determining these factors were interviews with the Black students. The study concludes that the majority sought admission because of individual desire for education and training.

Stephenson, Larry. "The Sipuel Case." Sooner Magazine 20 (January 1948): 5, 26.

Discusses the circumstances of the Sipuel case at the time of the Supreme Court's decision on January 12, 1948. The action of the state supreme court and Regents' plan for a separate Black law school are described, as are the reactions of various organizations and University of Oklahoma students. Of interest is the author's survey analyzing student opinions on the desegregation of White educational institutions and the alternatives.

Storey, Moorefield. "The 'Grandfather Clause': Attack on the Constitutionality of the Oklahoma Law in the Highest Court." Lawyer and Banker 6 (1913): 358-67.

Examines the actual language of the "Grandfather Clause" in view of the obvious intention of this amendment to the Oklahoma constitution. An analogy is made to the language in other cases in which courts have ruled statutes invalid when they were contrived to accomplish purposes contrary to the United States Constitution by evading the letter of its prohibitions.

Swain, Ruth E. Ada Lois: The Sipuel Story. New York: Vantage Press, 1978.

A warm personal account of one of the civil rights pioneers, Ada Lois Sipuel, whose case drew national attention to the inequality of "separate but equal" education. The case is set within the context of Sipuel's family and friends, and others caught up in the Civil Rights Movement.

Teall, Kaye M. Black History in Oklahoma: A Resource Book. Oklahoma City Public Schools, 1971.

Covers important events involving Blacks in Oklahoma from the time of Spanish explorations through the Civil Rights Movement. The history is told through contemporary newspaper accounts and magazine articles, archival material, documents, and first-person narratives, enhanced by numerous photographs. The Sipuel case is described as "a case of the utmost importance not only in Oklahoma but nationally." The McLaurin case is briefly commented on for the significant constitutional development, that the different status accorded Blacks in White colleges was inherently unequal. The fight over the "Grandfather Clause" and its demise as a result of the Guinn case is described as well as the subterfuge used to accomplish the same end until ruled against in Lane v. Wilson. Also reported is the case of Hollins v. Oklahoma, which declared "lily white" juries unconstitutional.

Thompson, Charles. "The High Court Looks at Jim Crow." New Republic, April 17, 1950, pp. 22-24.

A contemporary view of the Sweatt and McLaurin cases then before the Supreme Court. Provides a general comment on the developments in the South and on current thinking relative to the "separate but equal" doctrine. The author anticipates accurately that the high court would render a decision favorable to the petitioners without passing on the validity of that doctrine.

Tolson, Arthur. The Black Oklahomans: 1541-1971. New Orleans: Edwards Printing, 1974.

Traces the role of Blacks in Oklahoma over approximately 430 years. Brief mention is made of Ada Lois Sipuel's successful fight to enroll in the University of Oklahoma's Law School. The efforts of George W. McLaurin to attend graduate school at the University are also described. Both cases are significant for breaking the legal basis for the state's segregated higher educational system and paving the way to demolish the "separate but equal" doctrine.

Vose, Clement E. Constitutional Change: Amendment Politics and Supreme Court Litigation Since 1900. Lexington, MA: Lexington Books, 1972.

Focuses particularly on two forms of American constitutional change--the process of national constitutional amendments and the process by which the U.S. Supreme Court overruled its previous decisions. The cases selected for the study reveal the social and political ingredients behind constitutional change.

In the chapter on the "Grandfather Clause," the Oklahoma example embodies the essence of constitutional debate--two resourceful and dedicated opposing sides in disagreement over fundamentals. The Oklahoma and Maryland disenfranchisement cases, which are described, offer a view of political parties functioning as interest groups by sponsoring constitutional litigation.

Wasby, Stephen L., Anthony A. D'Amato and Rosemary Metrailer. Desegregation from Brown to Alexander: An Exploration of Supreme Court Strategies. Carbondale: Southern Illinois University Press, 1977.

Examines the Supreme Court's strategies for handling race relations cases from the 1954 Brown decision to the end of the 1960's. In examining the period of change within the Court after 1937, Lane v. Wilson is described as the first evidence of a new and more realistic approach to the problem of voting rights. That case attacked statutory discriminatory intent which in effect perpetuated the denial of voting rights that had been outlawed in 1915 in Guinn and Beal v. United States under the so-called "Grandfather Clause." Many references are made to the Sipuel and McLaurin cases as the authors trace first the Court's attempt to give the segregationist states time to achieve equality of educational opportunity and finally the Court's deeper concern for quality in relation to equality of education. Dowell v. Board of Education of Oklahoma City is discussed and singled out for the innovation shown in the lower court's use of experts to devise a school desegregation plan.

Individual Rights

Oklahoma Natural Gas Co. v. Oklahoma, 258 U.S. 234 (1922).

On the basis of the quantities of gas furnished, the Oklahoma Natural Gas Co. charged its customers the maximum rate allowed. The Supreme Court affirmed that a gas company whose franchise obligates it to render efficient service to the public and whose rates and services are regulated by a public commission is not deprived of property without due process by an order of the commission to reduce bills and refund customers to compensate for poor service.

Frost v. Corporation Commission, 278 U.S. 515 (1929).

This case arose under an Oklahoma statute which required a person to prove a public necessity for a cotton gin before the requisite license could be issued to operate the gin. However, it allowed cooperative associations to secure a license without showing public need. Frost, who had obtained a license to operate a cotton gin, by showing a public need, enjoined a cooperative association in the neighborhood on the grounds that the exemption denied him both due process and equal protection of the laws guaranteed by the Fourteenth Amendment. On appeal, the Supreme Court found for the plaintiff, reversing the decision of the lower court.

New State Ice Co. v. Liebmann, 285 U.S. 262 (1932).

An Oklahoma statute declared the manufacture, sale, and distribution of ice a public business and required anyone engaging in such activity first to procure a license from the state commission. To prevent Liebmann from manufacturing, selling or distributing ice without a license, the New State Ice Co. brought suit against him. The Supreme Court, in affirming the lower court decree, found that, in effect, the regulation denied or curtailed the right to engage in a lawful business and was therefore inconsistent with the Fourteenth Amendment.

Skinner v. Oklahoma ex rel. Williamson, 316 U.S. 535 (1942).

An Oklahoman, Arthur Skinner, was convicted of three separate crimes, once for stealing chickens and twice for armed robbery, and was ultimately sent to the penitentiary, where he was when the state enacted the Habitual Criminal Sterilization Act. The Attorney General subsequently began proceedings against

Skinner, who, having committed "more than two felonies involving moral turpitude" met the definition of habitual criminal and was directed to be sterilized. The case went through the lower courts and the affirming decision of the Oklahoma Supreme Court was appealed to the U.S. Supreme Court on the grounds that other classes of crimes, such as embezzlement and political offenses, were not included. The case was decided for Skinner on equal protection of the laws, although lack of substantive due process was implied.

Lyons v. Oklahoma, 322 U.S. 596 (1944).

The petitioner, Lyons, was convicted in federal district court for murdering a couple and their young son, then burning the house to conceal the crime. Lyons, who had previously served in the penitentiary for chicken stealing and burglary, complained of police brutality. After two interrogations, he made an oral confession under circumstances of intimidation, which raised questions as to whether it was voluntary. Further interrogations ensued at the scene of the crime and at the penitentiary where he signed a second confession. The Supreme Court rejected the petitioner's claim that he was denied the equal protection of the laws under the Fourteenth Amendment and upheld the Criminal Court of Appeals decision that the effect of prior coercion in the first confession had dissipated before the second confession, which was therefore considered to be voluntary.

Wieman v. Updegraff, 344 U.S. 183 (1952).

An Oklahoma statute required all state officers and employees, as a condition of employment, to take a loyalty oath which included a statement that they were not, and had not been, for the preceding five years a member of any organization listed by the Attorney General's Office as communist or subversive. The Oklahoma Supreme Court upheld its constitutionality and construed it to exclude persons from employment solely on the basis of such membership, regardless of their knowledge of the purposes and activities of those organizations. The appellants, members of the faculty and staff of a state college, failed to take the oath as required and, as a result of a court order, would have their salaries withheld. They claimed the act violated due process under the Fourteenth Amendment. The U.S. Supreme Court, on appeal, reversed the judgment and held that the Due Process Clause did not permit a state to classify innocent with knowing association in attempting to bar persons from state employment on the basis of their organizational membership.

Williams v. Oklahoma, 358 U.S. 576 (1959).

The petitioner, Williams, had robbed a gas station and while fleeing from the police forced his way into a man's car and at gunpoint forced him to drive far into the country, where he shot and killed him. After being charged in an Oklahoma court with murder and pleading guilty, Williams was sentenced to life imprisonment. Thereafter, in another trial, he was charged with kidnapping in the same crime, to which he pleaded guilty and was sentenced to death. On appeal, the Supreme Court affirmed the decision of the state Criminal Court of Appeals that the sentence did not violate the Due Process Clause of the Fourteenth Amendment; under Oklahoma law kidnapping and murder are separate and distinct offenses--no question of double jeopardy existed.

Barber v. Page, 390 U.S. 719 (1968).

Petitioner, Barber, and one Woods were jointly charged with armed robbery. In a preliminary hearing, Woods waived his privilege against self-incrimination and testified against the petitioner. He was not cross-examined at the time by the petitioner's counsel. When Barber was tried in Oklahoma several months later, Woods was in a federal prison in Texas. The State of Oklahoma, making no attempt to obtain Wood's presence at the trial, introduced a transcript of his earlier testimony on the basis that he was out of state and unavailable to testify, despite the petitioner's objections. Barber appealed his conviction unsuccessfully in the state court, on the grounds that his right to confrontation under the Sixth and Fourteenth Amendment was violated. The Supreme Court granted a hearing and reversed the lower courts, declaring that the witness was not unavailable and that the State had not made a good faith effort to obtain his presence.

Broadrick v. Oklahoma, 413 U.S. 601 (1973).

Three Oklahoma Corporation Commission employees were charged by the state personnel board with actively engaging in partisan political activities, including fundraising for the benefit of their superior. The Supreme Court held that the provision of the state statute, which was modeled on the Hatch Act, prohibited such activity and was not impermissably vague or overbroad. Thus, it did not constitute a violation of the First Amendment. The Court did leave open the question of impermissability of other restrictions in the law against political buttons and bumper stickers, inviting future petitions against such prohibitions.

Craig v. Boren, 429 U.S. 190 (1976).

Appellant, Craig, a male between 18 and 21 years old, filed a suit, claiming that the Oklahoma law prohibiting the sale of "nonintoxicating" 3.2% beer to males under the age of 21 and to females under 18 constituted a gender-based discrimination and denied males 18-20 years of age equal protection of the laws. The controversy was mooted when Craig became 21, but Whitener, a licensed vendor of 3.2% beer, was recognized as having standing to bring the challenge. The Supreme Court reversed the District Court's decision which upheld the law on the basis of statistical evidence regarding young males' drunk driving arrests and traffic injuries. The Supreme Court, not recognizing the application of the Twenty-first Amendment when there is an established claim under the Equal Protection Clause, declared that the principles of that clause governed and could not be rendered inapplicable by reliance on the statistically measured but loose-fitting generalities of the drinking and driving survey.

Oklahoma Publishing Co. v. District Court, 430 U.S. 308 (1977).

A pretrial order by the district court enjoined the news media from publishing the name and photograph of an 11-year old boy in connection with a pending juvenile proceeding in which he was charged with delinquency by second degree murder. Although the hearing was closed, members of the press were present with the knowledge of, and without objection by, the judge, the prosecutor, and the defense counsel. Moreover, the boy's name and photograph were already public knowledge, having been in the papers prior to trial. The order, sustained by the Oklahoma Supreme Court, was reversed by the U.S. Supreme Court as an abridgement of freedom of the press thereby violating the First as well as the Fourteenth Amendments.

Hicks v. Oklahoma, 447 U.S. 343 (1980).

The petitioner, Hicks, was convicted and received a jury imposed sentence of 40 years, as a twice previously convicted felon. Although the provision that mandated such a sentence under the state habitual offender law was declared unconstitutional by the state Court of Criminal Appeals in another case, his conviction was affirmed. The Supreme Court declared that the state denied the petitioner the jury sentence to which he was entitled under state law simply on the frail conjecture that the jury might have imposed a sentence equally as harsh as that mandated by the invalid sentence.

Ake v. Oklahoma, 470 U.S. 68 (1985).

Glen Burton Ake was arrested for murdering a husband and wife and wounding their two children. He was committed to a state mental hospital and subsequently found competent by a hospital psychiatrist to stand trial, provided he continued to receive medication. Defense counsel entered an insanity plea stating that a psychiatrist was necessary for an adequate defense. He sought the court's assistance in providing one, but the request was denied. Without the testimony of an expert psychiatrist for either side, the insanity plea was rejected; thus the defendant was found guilty. On appeal, the state Court of Criminal Appeals upheld the conviction. However, the U.S. Supreme Court reversed it and held that Ake was denied due process, because indigent criminal defendants are entitled to the assistance of a psychiatrist at state expense, if they can prove that sanity will be a significant factor at trial or if, in a capital sentencing proceeding, the prosecution introduces expert testimony as to the defendant's future dangerousness.

* * * *

"Constitutional Law--Loyalty Oaths--Due Process." Miami Law Quarterly 7 (June 1953): 578-80.

The writer feels that the Updegraff case has established a requirement necessary to the practicability of loyalty oaths. Knowing membership in subversive organizations must be made implicit in loyalty oaths so that members who are ignorant of the real purpose of such organizations will be protected. However, he further states, the Court circumvented the question of whether a constitutional right to public employment exists.

"Criminal Procedure--Defendant's Due Process Right to a Psychiatric Expert--Ake v. Oklahoma." Campbell Law Review 8 (Spring 1986): 323-38.

Comments on and analyzes the Ake suit, in which the Supreme Court held that an indigent defendant is entitled to access to a psychiatrist after having made a preliminary showing that sanity at the time of the offense was likely to be a significant factor at trial. The majority opinion thereby extended the long-recognized due process principle that requires proper functioning of the adversary process. Prior to Ake, the Court had spoken only once on the issue of state-paid supporting services beyond appointed counsel for indigent criminal defendants. Henceforth, in the writer's opinion, the three-part process enumerated in Ake should provide the standard for determining the basic tools necessary for an adequate defense in future criminal trials; moreover, defense should not be limited solely to cases of alleged insanity.

"Evidence--A New Restriction on an Exception to the Hearsay Rule." Tulsa Law Journal 6 (March 1970): 182-6.

Notes that in deciding whether a witness is unavailable for the purpose of allowing the introduction of former testimony, the Court is vested with a wide discretion. However, in Barber v. Page the Supreme Court reversed the lower courts and took the position that the prosecuter failed to present a sufficient showing of unavailability. The writer comments that, as a result of Barber, unavailability has a new and narrower dimension and the probable result will be that introduction of this type of hearsay evidence will be increasingly difficult.

"Gender-Based Discrimination and Equal Protection: The Emerging Intermediate Standard." University of Florida Law Review 29 (Spring 1977): 582-93.

Suggests that, despite the four separately concurring opinions, the Craig case may mark the emergence from a badly divided Court to a consistent and coherent standard to be applied in sex discrimination cases. The author further opines that the Supreme Court should release any vestigial hold it retains on the two-tier system and concentrate on sharpening the analytic components of the emerging intermediate standard.

"An Indigent's Constitutional Right to Expert Psychiatric Assistance: Ake v. Oklahoma." Southwestern Law Journal 39 (November 1985): 957-73.

Provides analysis of the Ake case and also examines current state statutes on the obligation to provide psychiatric assistance to indigent defendants, even the quality of that assistance. The author notes that the Court was unconvinced by the argument that such assistance could cause economic hardship for the state. The states will have to make significant changes to implement the majority view that an expert defense consultant, which few states currently provide, is constitutionally required. The opinion is expressed that most states will probably limit the holding to capital cases.

"Loyalty Oaths.....How Far? Albany Law Review 17 (June 1953): 266-82.

In Weiman v. Updegraff, the U.S. Supreme Court for the first time since the loyalty oath cases of the post-Civil War era struck down a state-required loyalty oath. At least sixteen other states had enacted loyalty oath statutes in one form or another, as a result of events in the "Cold War." The Court's decision, although not a radical change of view, is significant because it emphasizes and focuses on the wording of loyalty oaths; for example, the mere fact of association with alleged subversives is not sufficient to justify denial of ordinary privileges.

Pickens, Donald K. "The Sterilization Movement: The Search for Purity of Mind and State." Phylon 28 (Spring 1967): 78-94.

Surveys the history of the American sterilization movement since the turn of the century. It is portrayed as a logical, organic development of nineteenth-century naturistic, nationalistic, and nativistic thought contributing to the Progressive Reform Movement of the twentieth century. More than 20 states

passed sterilization legislation, but the Supreme Court's decision that declared the Oklahoma Habitual Criminal Sterilization Act of 1935 unconstitutional severely damaged the punitive aspect of sterilization.

"The Press and Juvenile Delinquency Hearings: A Contextual Analysis of the Unrefined First Amendment Right of Access." University of Pittsburgh Law Review 39 (Fall 1977): 121-35.

The author states that freedom of the press comprises two rights, which the U.S. Supreme Court has not accorded equal treatment. The first is the right to publish controversial or sensitive information, which has been defined in numerous past rulings. The second is the right of access, which the Court has addressed by concentrating on the peculiarities of situations rather than fashioning general standards. Its first direct ruling on the issue was in Oklahoma Publishing Co. v. District Court. Rather than addressing the constitutionality of denying the press the right to attend juvenile hearings, the Court decided the case on the narrower "public record" rationale. The note focuses on a reconciliation of past access cases in order to build a foundation from which reforms in statutes regulating press attendance at juvenile hearings can be made. The author maintains that the press has no right of access to delinquents' names, but it should have access to hearings for the purpose of reporting all other information.

Rossman, George. "Review of Recent Supreme Court Decisions: Constitutional Law... Legality of Sentence." American Bar Association Journal 45 (April 1959): 378.

Reports on Williams v. Oklahoma, in which the Supreme Court affirmed the sentencing of the petitioner to death on a murder charge to which he pleaded guilty. As he also pleaded guilty to and was charged with kidnapping, he claimed double jeopardy. The Court saw no violation of the Fourteenth Amendment, murder and kidnapping being two distinct charges under Oklahoma law, and further rejected the contention that the death sentence was disproportionate to the crime.

Coyle v. Smith, 221 U.S. 559 (1911).

Under the Oklahoma statehood act of 1906, Guthrie was to be the state capital until 1913. However, in an election, held on June 11, 1910, Oklahoma City was voted the permanent capital. Immediately the Governor, with the Secretary of State bringing the state seal with him, arrived in Oklahoma City and proclaimed it the new captial. A group of Guthrie citizens challenged the election and won their suit in district court, only to be overturned in the state supreme court. While the case was being appealed to the U.S. Supreme Court, the Oklahoma Legislature passed an act on December 7, 1910 making Oklahoma City officially the state capital. The Supreme Court thereafter upheld the finding that the act was constitutional. It noted that the power given to Congress by Article IV, section 3 of the Constitution to admit new states to the Union pertains only to states that are equal to each other and competent to exercise such sovereignty as not delegated to the federal government. No prior decision of the Supreme Court sanctions the claim that Congress in admitting a new state can impose conditions in the enabling act, the acceptance of which would deprive a state when admitted of any attribute of power essential to its equality with the other states.

Oklahoma v. Guy F. Atkinson Co., 313 U.S. 508 (1941).

Oklahoma filed a bill in equity to enjoin the construction of a dam across the Red River, which was not navigable above, nor immediately below, the proposed project. The bill alleged that the act authorizing the dam as a flood control and water power project was unconstitutional and challenged the right of the government to take the state's domain. The Supreme Court, in affirming the district court's decision, denied the injunction and established the principle that federal jurisdiction extends to non-navigable stretches and tributaries of navigable streams and that the project, therefore, was a valid exercise of the commerce power of Congress.

Oklahoma Press Publishing Co. v. Walling, 327 U.S. 186 (1946).

A district court denied the application of an administrator of the Department of Labor to enforce a subpeona duces tecum requiring certain books, records, and documents of a newspaper publishing corporation to be produced. The Circuit Court of Appeals reversed the decision and was upheld by the U.S. Supreme

Court. In the Court's opinion, provisions of the Fair Labor Standards Act, which authorized the administrator to investigate employment conditions and practices in any industry, were constitutional; the subpoena did not violate prohibitions of the Fourth Amendment against unreasonable searches and seizures; and the Fifth Amendment did not afford protection either for the corporation or its officers with respect to self-incrimination.

Oklahoma v. United States Civil Service Commission, 330 U.S. 127 (1947).

While a member of the Oklahoma Highway Commission, which was the recipient of loans and grants from a federal agency, France Paris served as chairman of the Democratic State Central Committee and participated in a fund-raising dinner. The U.S. Civil Service Commission interpreted this as a violation of the Hatch Act and called for the removal of Paris as highway commissioner. When removal was not forthcoming, the Civil Service Commission ordered the witholding of highway grants to the state in an amount equal to two years of Paris' pay. The case was argued as an invasion of state sovereignty, thereby violating the Tenth Amendment. The Supreme Court held that the state had standing to question the constitutionality of the act but ruled that the Tenth Amendment was not violated.

Williamson v. Lee Optical Co., 348 U.S. 483 (1955).

An Oklahoma statute made it unlawful for any person not a licensed optometrist or ophthalmologist to fit lenses or to duplicate or replace lenses into frames without a prescription. Other provisions prohibited advertising or soliciting the sale of eyewear and regulated eye examinations or visual care. The U.S. Supreme Court upheld the state courts in deciding that the Due Process and Equal Protection Clauses of the Fourteenth Amendment were not violated. The case was frequently cited by the Court to typify its disposition in economic regulation: "The day is gone when this Court uses the Due Process Clause of the Fourteenth Amendment to strike down state laws, regulatory of the business and industrial conditions, because they may be unwise, improvident, or out of harmony with a particular school of thought."

Hughes v. Oklahoma, 441 U.S. 322 (1979).

The appellant, William Hughes, operated a licensed commercial minnow business in Texas and was arrested by an Oklahoma ranger for transporting across the border minnows purchased from a licensed Oklahoma dealer. This was expressly forbidden under an Oklahoma law, which Hughes contended was unconstitutional, and repugnant to the Commerce Clause. Defense rejected, he was

found guilty and fined. The Oklahoma Court of Criminal Appeals affirmed the conviction which was later reversed by the U.S. Supreme Court. The state's claim of conservation interest failed in that it overtly discriminated against interstate commerce and was not given effect within its own borders.

United States v. Rutherford, 442 U.S. 544 (1979).

Terminally ill cancer patients and their spouses brought this action in Oklahoma to enjoin the government from interfering with the interstate shipment and sale of Laetrile, a drug not approved for distribution under the Federal Food, Drug, and Cosmetic Act. The Supreme Court, in reversing a ruling of the state court in favor of the petitioners, concluded that since the Act made explicit provision for carefully regulated use of certain drugs not yet demonstrated safe and effective, no exception for terminally ill patients could be judicially implied.

World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, (1980).

While traveling through Oklahoma in 1977, members of the Robinson family were severely injured when their Audi was struck in the rear and burst into flames. Alleging that their injuries resulted from a defective design, the Robinsons, out-of-state residents, sued in an Oklahoma court the automobile's manufacturer and various corporations in the Audi distribution chain, including World-Wide Volkswagen Corp., which refused to recognize Oklahoma's jurisdiction. The case was appealed to the U.S. Supreme Court which stated that, although it is foreseeable that automobiles sold by that company would travel to Oklahoma and might cause injury in the state, such "foreseeability" is not in itself a sufficient benchmark for jurisdiction under the Due Process Clause; therefore the judgment of the state supreme court was reversed.

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"Administrative Law--Right of an Adminstrative Agent to Issue Subpoena Duces Tecum." University of Detroit Law Journal 9 (May 1946): 210-12.

The decision in Oklahoma Press Publishing Co. v. Walling is referred to as a milestone in the ever-expanding field of administrative law. The Supreme Court dealt with several important questions in upholding the broad powers given to an administrative agent in the Fair Labor Standards Act. Although the decision seemed to be essentially sound with regard to the interstate commerce powers of Congress, the author feels that there is some wisdom in the foreboding of Justice Murphy's dissent, in which he foresees a grave departure from the administration of justice by granting an agent of Congress the power to subpoena.

Barber, Sotirios A. On What The Constitution Means. Baltimore: Johns Hopkins University Press, 1984.

Includes a discussion of the Supreme Court's use of due process from the late 1890's to the mid-1930's as a weapon against governmental regulation of business; this judicial view of the "Old Court" being rejected after the Depression Era. The author notes, however, that Williamson v. Lee Optical Co. was a notorious case in which the "Modern Court" sanctioned a legislative action that appeared oblivious to the due process requirement that government should strive for arrangements that are in the common good. In characterizing the Justices' deliberations as "inventing hypothetical reasons," the author comments that progressives can act unjustly, too.

Branson, Fred P. "The Removal of the State Capital." Chronicles of Oklahoma 31 (Spring 1953): 15-21.

A firsthand account by a political leader, later state Supreme Court Justice, of the train of events which removed the state capital from Guthrie to Oklahoma City, beginning with the election and gubernatorial proclamation and ending with settlement of the dispute by the United States Supreme Court. The author disclaims some of the more colorful stories of how the whole body of government, along with the state seal, was transferred overnight to Oklahoma City.

Brant, Jonathan and John Graceffa. "Rutherford, Privitera and Chad Green: Laetrile's setbacks in the Courts." American Journal of Law and Medicine 6 (Summer 1980): 151-71.

Discusses the interrelationship of the three cases, in light of which the authors conclude that supporters of Laetrile should not expect the courts to be sympathetic to future legal efforts to approve or promote the use of Laetrile therapy. Under a constitutional privacy theory several courts upheld the right of competent adults to select Laetrile therapy until the Rutherford case in Oklahoma and the Privitera case in California. These cases narrowed the federal constitutional privacy right by declining to read into it a right to take nonapproved drugs. The issue of the drug's toxicity was raised in the Massachusetts case, Chad Green. The Supreme Court's decision in Rutherford, upholding the Appeals Court's summary reversal of the constitutional privacy question, therefore represents, to this point, the most significant setback to efforts to legalize nonapproved drugs, such as Laetrile.

"Enforcement of Administrative Subpoenas." George Washington Law Review 14 (June 1946): 602-10.

Notes that the opinion of Justice Rutledge in this case is particularly noteworthy because of its penetrating analysis of the issues involved in judicial enforcement of administrative subpoenas. In the author's opinion, "strict adherents to the separation of powers theory of government will not find comfort in the blurring of executive and judicial functions implicit in this opinion." Recognition of a need for prompt and effective administration of remedial social legislation is the basis of the Court's attitude. The conclusion states that: "In the Oklahoma Press case the Court seems to go as far as is conscionably possible in its effort to accommodate itself to the executive branch."

Heady, Ferrel. "American Government and Politics: The Hatch Act Decisions." American Political Science Review 41 (August 1947): 687-99.

Discusses the principal provisions of the Hatch Act, which were challenged in two cases decided by the Supreme Court in February 1947. The first, United Public Workers v. Mitchell, relating to Section 9 limited the political activities of federal employees; the second, Oklahoma v. United States Civil Service Commission, dealt with Section 12 restricting political activities of state and local employees whose principal employment involved federal monies. In these cases a divided court held both provisions constitutional. According to the author, the decisions had a two-fold significance. They made a substantial

contribution to the constitutional doctrine concerning the balance between public interest and individual liberties and, in addition, contain provocative suggestions for the formulation of legislative policy regarding political activities of public employees.

Kelly, Alfred H. and Winfred A. Harbison. The American Constitution: Its Origins and Development. 5th ed. New York: W.W. Norton, 1976.

Presents a general picture of the growth and development of the American constitutional system. In discussing the Commerce Clause, the authors make the point that the case of Oklahoma ex rel. Phillips v. Atkinson is one in which the Court went well beyond ideas hitherto held as to the limit of federal control over navigable streams. Flood control and waterway development, even entire watershed protection, were recognized as equally valid constitutional objectives of Congress as maintenance of navigation.

Kurland, Philp S. and Gerhard Casper, eds. 1979 The Supreme Court Review. Chicago: University of Chicago Press, 1980.

Reviews the case of Hughes v. Oklahoma as part of the "developing mosaic" of the Supreme Court's Commerce Clause jurisprudence. Modern Commerce Clause analysis makes clear that the Court, in delineating the implied limitations that the clause imposes on state legislation, is engaged in a delicate balancing of state and national interests. Recent opinions, of which Hughes is the latest, suggest that the balancing process is being undertaken in a more consistent fashion than in the past, and the propositions enunciated are settled for the time being. From a doctrinal standpoint, Hughes did little more than extinguish whatever was left of the "fiction" of state ownership of wildlife within its borders.

Louis, Martin B. "The Grasp of Long Arm Jurisdiction Finally Exceeds Its Reach: A Comment on World-Wide Volkswagen Corp. v. Woodson and Rush v. Savchuk." North Carolina Law Review 58 (March 1980): 407-33.

The two Supreme Court cases discussed have further highlighted those minimum contacts necessary to avoid the due process limitations on state court jurisdiction. The author examines the specific factors relevant in the minimum contacts analysis applied by the Court in the line of cases leading up to and continuing through the pronouncements in World-Wide Volkswagen Corp. and Rush. He asserts that these cases should end prior

notions that minimum contacts analysis involved a fluid balancing of the co-equal interests of the plaintiff, the defendant, and the forum state.

Monnet, Julien C. "Violations by a State of the Conditions of Its Enabling Act." Columbia Law Review 10 (November 1910): 591-607.

Comments on an observable tendency in the Congressional enabling acts, over a quarter century, to impose severe conditions and restrictions on a territory seeking admission into the Union. The author, in discussing the general nature of compacts with the federal government made at the time of admission into the Union, focuses on the sovereign right of states with regard to taxing power, power of eminent domain, and police power. He comments, in detail, on a state's right to locate or relocate seats of government, as recognized in the Oklahoma case Coyle v. Smith.

Payne, John M. "Jurisdiction in Personam: World-Wide Volkswagen v. Woodson. Forum 15 (Summer 1980): 1023-30.

The Supreme Court held that a retailer and regional product distributor with no demonstrable shipments, sales or other business in the forum state, cannot be constitutionally held amenable to the forum's in personam jurisdiction in an action for personal injuries allegedly caused by a design defect in the product. Unfortunately, the results are inconclusive, in the author's opinion, and the Court's signals mixed at best.

Rakestraw, Bryan L. "The Reciprocity Rule of Governmental Tax Immunity--A Legal Myth." Oklahoma Law Review 3 (May 1950): 131-71.

Reviews the origin and development of the intergovernmental immunity doctrine and the criteria by which this doctrine was applied in later years through the reciprocity rule and doctrine of functions. Tax immunities, which are not mentioned in the federal constitution, are not inflexible requirements but the result of judicial decisions. In analyzing the metamorphic changes to the tax immunity doctrine, the author discusses the decision in Oklahoma Tax Commission v. Texas Co. that further restricted the breadth of intergovernmental immunities by bringing its treatment of lessees of the federal government into harmony with that of independent contractors, thereby overruling its holding in five earlier tax immunity cases that originated in Oklahoma.

Ripple, Kenneth F. and Mollie A. Murphy. "World-Wide Volkswagen Corp. v. Woodson: Reflections on the Road Ahead." Notre Dame Lawyer 56 (October 1980): 65-88.

The case of World-Wide Volkswagen Corp. v. Woodson re-examines the constitutional limitations of state jurisdiction and significantly elucidates the constitutional policy considerations underlying this area. Nevertheless, other yet unresolved issues are brought into sharper focus. This article first assesses the significance of the case in the overall doctrinal development of jurisdictional standards, and second, suggests several areas in which it may provide an important conceptual stepping stone for further doctrinal growth.

Volzer, Harvey J. "Laetrile and the Privacy Right in Decisional Responsibility." Medical Trial Technique Quarterly 26 (Spring 1980): 395-429.

Comments that a critical reading of United States v. Rutherford leaves one with a feeling that the Supreme Court has betrayed each of us as individuals. The net result, according to the author, is an abdication of the Court's responsibility for deciding weighty issues by characteristically avoiding constitutional issues if a nonconstitutional basis for a decision exists. Thus, Rutherford, potentially a very important constitutional law case, is transformed into a quite ordinary administrative law decision. This paper focuses on the privacy right in decisional responsibility and argues that this right is fundamental and exists whenever an informed individual takes the responsibility for decisions affecting his unique being and circumstances. The case is used to develop the right to privacy in decisional responsibility and, in so doing, some of the most far-reaching cases involving constitutional issues are cited.

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